REMARKS

Entry of this Amendment and reconsideration are respectfully requested in view of the remarks made herein.

Claims 1-7 are pending and stand rejected. Claim 4 has been amended. No new matter has been added.

The instant Office Action has been entered in response to the Revised Appeal Brief filed on June 16, 2005 and has been designated as a Final Office Action.

Applicant respectfully disagrees with and explicitly traverses the designating of the instant Office Action as Final.

MPEP 706.07(a) states that a Final Rejection is proper on a "second or any subsequent actions on the merits ... except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims." Applicant's attorney believes that in view of the arguments made in the Revised Appeal Brief prosecution in this matter was reopened by the Office and the instant Office Action cites a new reference for rejecting the claims. The new reference was not necessitated by any amendments made to the claims.

As the prosecution of this matter has been reopened in view of the arguments made in the Revised Appeal Brief, the instant Office Action is a first Office Action and that the designation of the instant Office Action being Final is improper.

Applicant would note that MPEP 706.07(b) states that a Final Rejection is proper on a first Office Action when:

(A) the new application is a continuing application of, or a substitute for, an earlier application; and

(B) all claims of the new application

(1) are drawn to the same invention claimed in the earlier application, and

(2) would have been properly finally rejected on the grounds and art of record in the next Office action, if they had been entered in the earlier application.

In this case, the claims were rejected based on a new art of record, which was not necessitated by amendments made to the claims. Applicant, accordingly, believes that the designation of the instant Office Action as Final is premature. Pursuant to MPEP

706.07(c), applicant respectfully requests that the designation of the instant Office Action as Final be withdrawn.

Claims 1 and 5-7 stand rejected under 35 USC 102(e) as being anticipated by De Haan (USP no. 6,278,736). The Office Action states that De Haan refers to a histogram algorithm, determines peaks of the histogram and corrects the pixel values using equations 20 and 21 on the basis of the histogram parameters to produce a modified digital video signal (e.g., Eq. 12 and 13).

Applicant respectfully disagrees with, and explicitly traverses, the reason for rejecting the claims.

De Haan discloses a method for estimating motion vectors, wherein motion parameters are determined for a given field of a video signal and motion vectors for a next field are determined in dependence upon at least one predetermined motion vector and at least one addition motion vector derived from the motion parameters.

Contrary to the statements made in the Office Action, De Haan, as read by the applicant, discloses that motion parameters may be determined by a histogram wherein the "peaks in the histogram forming the motion parameters. The peaks indicate motion vectors which very often occur in the image and which probably describe a global motion. The motion vectors indicated by the peaks, and/or points of gravity of a cluster of peaks, can be used as additional parametric motion vectors." (see col. 15, lines 9-17). Hence, rather than the values of the histogram being used to correct pixel values, De Haan teaches that the peak values can be used as additional motion vectors.

A claim is anticipated only if each and every element recited therein is expressly or inherently described in a single prior art reference. De Haan cannot be said to anticipate the present invention, because De Haan fails to disclose each and every element recited. As shown De Haan fails to describe "correcting the original pixel values on the basis of the histogram parameters to provide modified pixel values."

For at least this reason, applicant submits that the reason for the rejection of the claim has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claim.

With regard to claims 5-7, these claims recite subject matter similar to the method recited in claim 1 and were rejected for the same reason used in rejecting claim 1. Thus,

for the remarks made in response to the rejection of claim 1, which are also applicable in response to the rejection of claims 5-7, and reasserted, as if in full, herein, in response to the rejection of claims 5-7, applicant submits that the reason for rejecting these claims has been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

Claims 2-4 stand rejected under 35 USC 103(a) as being unpatentable over De Haan in view of Hampson ("Motion Estimation in the Presence of Illumination Variations").

Applicant respectfully disagrees. Claims 2-4 depend from independent claim 1, which has been shown to include subject matter not disclosed by, and allowable over, DeHaan. Applicant respectfully submits that claims 2-4 are allowable at least for their dependence upon an allowable base claim, without even contemplating the merits of the dependent claims for reasons analogous to the decision held by In re Fine, 837 F.2d 1071, 5 USPQ 2d 1596 (Fed. Cir. 1988) wherein if an independent claim is non-obvious under 35 U.S.C. §103(a), then any claim depending therefrom is non-obvious. In this case, claims 2-4 depend from claim 1, which has been shown to not be anticipated by De Haan, and, hence, these claims contain subject matter not disclosed by the combination of De Haan and Hampson is fails to correct the deficiency of De Haan.

For at least this reason, applicant submits that the reason for the rejection of the claim has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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